

GHANA / JUDGMENT

The Republic Vrs Messack [2023]

GHADC 163 (30 March 2023)

[2023] GHADC 163

COURT

District Court

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SITTING IN THE DISTRICT COURT AT WENCHI IN THE BONO REGION ON THURSDAY THE 30TH DAY OF MARCH, 2023. BEFORE HIS WORSHIP ISSAH ABDUL-WAHAB ESQ (MAGISTRATE) CC NO: B7/13/23 THE REPUBLIC VS GYAMFI MESSACK

JUDGEMENT

The accused person herein was put before this court on a charge of stealing, contrary to section 124 (1) of the Criminal Offences Act, 1960 (Act 29). Accused pleaded not guilty to the charge after same was read and explained to him. From the particulars of the offence and the facts of the case as presented by the prosecution, the following issues were set down for trial;

1. Whether or not the accused herein appropriated the goat mention in the charge sheet;
2. Whether or not the said goat belongs to the accused;
3. Whether or not the appropriation was done dishonestly. The facts of the case as presented by the prosecution are that, the complainant is one Hon. Danquah Kwame age 40 years and a teacher. The accused Gyamfi Messack age 20 years is a porter and native of Tanoso near Nsawkaw. That on the 13th day of August, 2022, a witness in this spotted the accused with a goat that had been slaughtered and so the witness informed the complainant herein. That the complainant then proceeded to the said spot where he met the accused preparing food with the goat together with his friends. That the accused on seeing the complainant took to his heels. That the accused was later arrested by the complainant and the witness and interrogated over the goat. That the accused could not give any tangible explanation as to how he got the goat. That the accused mentioned one Kwaku Appiah @ Aburo as his accomplice. The accused was charged with the offence after Police investigations. The evidence of the prosecution in proof of the charge consisted of the testimonies of their three (3) witnesses including the police investigator of the case. The first prosecution witness (PW1) told the court he is Hon. Danquah Kwame and that he is a teacher and an assemblyman. PW1 said he knows the accused and the other prosecution witnesses. The witness said he also rear goats. That on the 13th day of August, 2022, one Baffour Joshua

(PW2) saw the accused with one other person carrying a dead goat suspected to have been stolen. PW1 said he then went with PW2 to the scene and there they met the accused with the goat. That immediately they saw them (PW1 & PW2) approaching, they took to their heels. PW1 said he reported the case to the police. That the accused was later invited to the Police Station where he was arrested. PW1 value of the goat is GH¢700.00. The second prosecution witness (PW2) was one Baffour Joshua, a farmer and resident of Tanoso near Nsawkaw. PW2 said he knows the complainant (PW1) as well as the accused person. That on the 13th day of August, 2022 at about 6:30 while he was going to toilet he saw the accused and one Kofi Nyame @ Aboro with a dead goat suspected to be stolen. PW2 said he went back and informed PW1 who is also the assemblyman for the area. PW2 said he led PW1 to the scene and the accused was arrested while his accomplice escaped. The accused was then sent to the Police Station. Closing the case for the prosecution, the third and final prosecution witness was the Police Investigator of the case. He said he is No. 57917 G/Const. Francis Kumi stationed at the Nsawkaw District Police Station. That he knows the complainant and the other witnesses as well as the accused. That on the 13th day of August, 2022, a case of stealing was reported at the station against the accused and same referred to him (pw3) for investigation. That the accused was already in Police Custody as he was arrested by the complainant. That statements were taken from witnesses. The accused was also cautioned. The caution statement of the accused was tendered and marked as Exhibit 'A'. That his investigations revealed that the stolen goat belonged to PW1 who is also the complainant in the case. Pw3 said he took photograph of the carcass (meat of the dead goat). The photograph was tendered and marked as Exhibit 'B'. After the investigation he was instructed to charge the accused with the offence as stated on the charge sheet. That the carcass was retrieved. After the prosecution closed their case, the court ruled that a case had been made out against the accused and he was called upon to open his defence. The accused person told the court he is Gyamfi Messack and lives at Tanoso near Nsawkaw. That he deals in charcoal. Accused said on the 12th day of August, 2022, he went to toilet and met his friend roasting a goat. That the said friend called him to come and download facebook for him. Accused said while he sat there and was doing it, they were also roasting their goat. Accused said when he went home later PW1 told his (accused) auntie that he stole his goat and so he (PW1) wanted him. Then he told PW1 that he did not steal the goat and that his friend brought the goat from Nsawkaw. Then the next day the town committee members said he stole the goat and took him (accused) to the Police Station. Accused said he told the police he did not steal but they did not arrest the boy he (accused) mentioned until he ran away. Accused said he does not know anything about the goat. Accused did not call any witness as he told the court he had none. After a painstaking evaluation of the evidence, it is important to observe that the prosecution told the court that PW2 met the accused and one another with the dead goat that they were cooking and PW2 upon seeing the accused and the other became suspicious and therefore informed PW1 about what he saw. That PW2 then led PW1 to the scene where the accused and the other took to their heels on seeing the witnesses. This was the testimony of PW1 and which was corroborated by PW2. Indeed the accused herein never denied the said fact that when they saw PW1 and PW2, they ran away.

The question then is why did the accused and the friend run upon seeing the witnesses? This clearly means the accused and the said friend were engaged in an act that was unlawful hence their decision to run on seeing the witnesses. Again it is important to note that PW1 who is also the complainant in the accused said on reaching the scene he identified the said goat as his and which the accused had stolen and killed same to eat. This again was confirmed by all prosecution witnesses who said they met the accused and the friend cooking the goat after they killed it. Again the accused never denied that when the witnesses came to the scene the carcass (meat of the dead goat) was been prepared by them for consumption. Indeed the accused only claimed that his said friend called him (accused) to download a facebook App for him which he was there doing. This claim by the accused is not only false but is an attempt to deny that which is so obvious it is not true that the accused was only there to download facebook but the accused and the said friend of his killed the goat and were in the process of cooking same when they were caught by PW2. Again the accused stated that the goat was brought from Nsawkaw. If the accused did not steal the goat with the aid of the accomplice, then he did it alone, and his claim that the friend brought the goat from Nsawkaw is absolutely not true. From the evidence as adduced before this court therefore, I found the following as facts;

1. That the accused and the friend had in their possession the goat of the complainant which said goat was stolen;
 2. That the accused and the said friend (now at large) were seen cooking the goat at a location by PW2 who reports to PW1 and PW1 identified the goat as his stolen goat.
 3. That the accused and the said friend on seeing PW1 and PW2 ran away.
 4. That the accused was later arrested and sent to the police and a formal complaint lodged. In a criminal trial, the burden of proof on the prosecution relative to the standard required of the prosecution is set out, in section 11 (2) of the Evidence Act, 1975 (NRCD 323). Section 11 (2) states that; "In a criminal action, the burden of producing evidence when it is on the prosecution as to any fact which is essential requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt". Again in the criminal trial the burden of proof in the sense of the burden of establishing the guilt of the accused is on the prosecution and failure on the part of the prosecution to discharge that must lead to acquittal of the accused. See *Donkor Vs The State* [1964]2GLR, 598 SC. It is also the law that the guilt of the accused in a criminal trial must be proved with the degree of certainty that is required by law. See *Yeboah Vs The Republic* [1972]2GLR, 289. The accused herein has been charged with the offence of stealing, contrary to section 124
- (1) of Act 29 of 1960. The prosecution as per the provisions of section 124 (1) of Act 29 must prove the essential ingredients of the offence of stealing. These are
1. That the accused appropriated the thing, and in this case the goat.

2. That the goat does not belong to the accused,
3. That the accused appropriated the goat without the consent of the owner and
4. That the accused appropriated the goat dishonestly. In relating the evidence as adduced to the law as stated above, it must be stated that the prosecution has established beyond doubt that the complainant's goat was found with the accused herein. The prosecution also proved that the accused appropriated the goat without the consent of the complainant (PW1) who is the owner. And that the accused appropriated the goat dishonestly. Having therefore considered the evidence and the law as stated, it is the conclusion of the court that the prosecution has proved the charge beyond reasonable doubt as required by law. The accused Gyamfi Messack is therefore found guilty of the offence of stealing and convicted accordingly. The reasons for the above conclusion include;
 1. That the goat was found with the accused and his friend now at large.
 2. That the two appropriated the goat dishonestly and killed same.
 3. That the accused appropriated the goat without the consent of the complainant (PW1) who is the owner.
 4. That the goat does not belong to the accused.
 5. That the prosecution proved the charge beyond reasonable doubt and as required by law. Mitigation- prosecution told the court the accused is not in court because he is in prison serving a sentence. Accused is sentenced to twelve (12) months imprisonment in hard labour. SGD..... ISSAH ABDUL-WAHAB (MAGISTRATE) 6

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